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IN THE

Supreme Court of the United States

October Term, 1952

No. 482

THE ROSICRUCIAN FELLOWSHIP, a Corporation; Z. GLENN MEYNCKE, JUANITA EMERICK, ADDA J. WILKES, FREDERICK OAKES, KITTIE COWEN, OMAR DODSON, MARGARET SCARBOROUGH, MARY MONAHAN, ADAM KNIELING, ALFA LINDANGER, DR. GAY OWEN, as Individuals, and as Officers, Trustees and Directors of The Rosicrucian Fellowship, a Corporation,

Petitioners,

vs.

THE ROSICRUCIAN FELLOWSHIP NON-SECTARIAN CHURCH, a Corporation; MRS. MAX HEINDEL; IRENE MURRAY, GEORGE SCHWENK, ARNOLD MULLI, KARL MUELLER, Individually and as Directors and Incorporators of The Rosicrucian Fellowship Non-Sectarian Church; THE ROSICRUCIAN PROBATIONERS ASSOCIATION; and RICHARD WEIHRICH,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement of the Case.

Petitioners, throughout their petition and supporting brief, have misstated points of fact as a foundation for their presentation of questions and arguments relating to jurisdiction and constitutional rights. At the outset, respondents will present a condensed statement of the true points of fact with specifications of erroneous points of fact made by petitioners.

A. Condensed Statement of Material Points of Fact.

A condensed summary of the points of fact based largely upon the Findings of the Trial Court, and other facts erroneously stated or omitted in petitioners' petition and brief, is as follows:

1. In 1909, an unincorporated church association was formed for the study of the "Rosicrucian Philosophy," a religious belief. By January, 1913, it had several hundred members known as "Probationers." It was known as, and used the name of, "The Rosicrucian Fellowship." [Finding II, R. 103-104.]

2. In January, 1913, Mr. and Mrs. Max Heindel, organizers of the association, and three dummy incorporators, formed a corporation known as "The Rosicrucian Fellowship," under the College and Seminary Sections of the Civil Code of California (Secs. 649-651), as distinguished from a church corporation under Sections 593-605 hereinafter of this code, for the express purpose of transferring to it real and personal property near Oceanside, California, known as "Mt. Ecclesia," together with certain temporal functions appertaining thereto, including the handling of moneys, publishing and selling of books, mailing esoteric letters prepared by the members of the church association, and the use of certain mailing lists of the association for mailing purposes only. Said corporation was formed without the knowledge, consent or approval of the members of the church association [Finding III, R. 105-108].

3. The college corporation continued to exist and do business as a college until 1943, and acted in the conduct of its temporal functions as a trustee; *cestuis* of the trust were the church association and its members [Finding

III, R. 105-108; Finding VII, R. 112]. The trustees (directors of the college corporation) openly admitted it was not a church [Finding VIII, R. 115].

4. By its Amended By-laws, adopted without the approval of the members of the church association, the college corporation was governed by a self-perpetuating Board of Trustees, and the twelve members of that board were the sole members of the Rosicrucian Fellowship, a corporation [Finding III, R. 108].

Note: This Finding of the Trial Court is directly contrary to petitioners' statement that the Rosicrucian Fellowship has over three thousand members all over the world (Statement appearing at pp. 2, 33 of the Petition).

5. From 1909 to July 6, 1944, Mr. and Mrs. Max Heindel and other members of the association continued to exercise the ecclesiastical functions of the church and to use the trust properties in connection with such ecclesiastical functions, except for the acts of interference by the college corporation and its trustees hereinafter stated [Finding II, R. 103; Finding IV, R. 108]. The church association, at all times after the date of formation of the college corporation until July 6, 1944, was known as, and used the name of, "The Rosicrucian Fellowship" [Finding IV, R. 109]. There was no evidence of deviation or departure from the religious belief or methods of dissemination thereof [R. 206]. There was no schism between the members of the association [R. 208].

6. On April 16, 1942, a representative suit was brought in the Superior Court of San Diego County, California (known as *Weaver v. Meyncke*) by the members of the association against the college corporation, (a) to deter-

mine the right of the members of the association to vote for trustees of the corporation, and (b) to compel restitution of trust funds misapplied in the operation of a sanitarium [Finding VIII, R. 114].

7. In January, 1943, it was determined in the *Weaver Case:* (a) That the Probationers, as members of the association, were a church known as "The Rosicrucian Fellowship," as distinguished from the college corporation, having at all times been engaged in the dissemination of the Rosicrucian Philosophy, without ecclesiastical organization or system of church government; (b) that the members of the association are not entitled to vote for Trustees of the college corporation; and (c) that trust funds were misapplied in the operation of a sanitarium, and that restitution should be made [Finding VIII, R. 114].

Note: This Finding approved by the State Supreme Court [R. 201-202] is contrary to petitioners' summary thereof at pages 16, 32.

8. In October, 1943, 287 members of the association *duly and regularly* formed an association known as the "Rosicrucian Probationers Association," with purposes: (a) to organize a permanent church institution of all Probationers; and (b) to establish an ecclesiastical government therefor. By July 6, 1944, approximately 400 Probationers (a majority of all the members of the church association in the United States), were members thereof [Finding IX, R. 115].

Note: This Finding is contrary to petitioners' statement, page 17, that this was a small group of disgruntled members of the Church.

9. After the decision in *Weaver v. Meyncke,* the Board of Trustees of the college corporation amended its By-laws, authorizing rules and regulations governing the members of the association; and, in December, 1943, adopted rules and regulations claiming exclusive control over church properties for all uses and purposes, and purporting to authorize such Board to suspend or expel members of the church association, with or without notice, hearing or cause. Such actions were taken without the knowledge or consent of the members of the church association. The Trustees removed and expelled two Probationers of the association and threatened to expel all other Probationers unless they ceased and desisted the organization of a permanent church, *took possession of trust properties by forceable entry and expelled and excluded the members of the church association, who sought to use the real and personal trust properties for ecclesiastical purposes.* None of the members of the church association consented or acquiesced in said rules and regulations, or claims, and are not estopped to claim or assert their rights to use the church properties for ecclesiastical purposes [Finding XII, R. 118-122].

10. Appellants have threatened, and will, unless enjoined by permanent injunction, continue to do each and all of said acts as aforesaid [Finding XII, R. 122].

11. On July 6, 1944, a majority of the members of the church association in the United States formed a church corporation: (a) to establish a system of church government for the benefit of all members of the church association; and (b) to protect their property rights as against the unlawful claims of ownership and use of possession of trust properties by the college corporation and its Trustees in the conduct of ecclesiastical functions. By

its By-laws, tenets, rules and regulations, a complete system of representative church government was established; all members of the association were privileged to join [Finding X, R. 116]. At the time of the trial (April 24, 1945), there were 706 Probationers residing in the United States, 541 of whom were members of respondent church corporation [Finding X, R. 118].

Petitioners' witness, Pearl B. Ackerman, testified on February 28, 1945, in substance: I am esoteric secretary of petitioner corporation [Rep. Tr. p. 114, lines 3-4]. As of January 19, 1945, there were 706 Probationers and Disciples in the United States and 1170 in the world [Rep. Tr. p. 152, line 24, to p. 153, line 8].

Note: This Finding of the Trial Court and evidence produced by petitioners is directly contrary to petitioners' statement that the Rosicrucian Fellowship has over three thousand members all over the world (see Pet. p. 2).

12. The college corporation at the trial claimed exclusive ownership of the mailing list and refused the members of the church association, seeking to organize the church association into a permanent church organization, the use thereof [Finding XV, R. 124].

13. Notices of the organization and copies of the Articles, By-laws and rules and regulations of the Probationers Association and respondent church corporation were mailed to all Probationers, whose names and addresses were known to the organizers [see testimony of Mr. George Schwenk, Rep. Tr. p. 1536, line 24, to p. 1539, line 18; p. 1508, lines 9-23].

14. After December, 1943, the college corporat[illegible] and its Trustees surreptitiously claimed and assumed exclusive ownership and use of the trust properties for ecclesiastical,

as well as temporal purposes, and excluded the unincorporated church association, the incorporated church, and the members of both, from using such properties for ecclesiastical purposes [Finding XII, R. 118; Finding XIII, R. 123].

None of these findings of fact were challenged by petitioners in their briefs in the state courts; they are now conclusive.

From the foregoing facts found it is evident that petitioner corporation, acting by and through its 12 self-perpetuating trustees attempted surreptitiously: (1) to claim exclusive ownership and exclusive use of all trust properties, the name, insignia, emblem, mailing list and copyrighted documents as against all Probationers, domestic and foreign, as members of the church association or as members of respondent church corporation, beneficial owners; (2) to usurp all ecclesiastical functions and to exclude any and all Probationers who attempted to use the trust properties for ecclesiastical purposes. These were the breaches of trust by petitioners found by the Trial Court, contrary to petitioners' statements at pages 11, 26, 32 and 33 of their petition that no breach of trust is involved.

B. Condensed Summary of the Pleadings.

In September, 1944, the college corporation, as plaintiff, commenced an injunction action in the Superior Court of Los Angeles County, against the church corporation and *five individual members of the church association,* as defendants.

In its complaint, the college corporation prayed:

> *"that defendants be enjoined: (1) from interfering in any way with the said business, property, services*

and affairs of plaintiff corporation; (2) from using the name 'The Rosicrucian Fellowship Non-Sectarian Church'; (3) from soliciting freewill offerings from Students, Probationers or Disciples of The Rosicrucian Fellowship; and (4) *from using any of the said copyrighted books and other literature;* that defendants be required to account for and pay to plaintiff corporation all freewill contributions received by it from the believers of the Rosicrucian Philosophy; *that defendants surrender to plaintiff, and desist from use of, said mailing list;* and for general equitable relief" [R. 10-11].

The defendants filed an answer and cross-complaint alleging, in substance, the facts found by the trial court above summarized. During the trial, the cross-complaint was amended so that the cross-action could be and was maintained for the benefit of all the Probationers in the United States, alleged to be 706 in number [R. 99-101]. The cross-action was against the college corporation and its twelve self-perpetuating Trustees for declaratory and other general equitable relief as to the ownership and right of use of the trust properties, the name "The Rosicrucian Fellowship," insignia, emblem, mailing list and the use of copyrighted books and other literature [R. 38-62].

An answer was filed to the cross-complaint. By the answer to the cross-complaint, the college corporation and its Trustees alleged and claimed: (1) Absolute ownership of real and personal trust property and the exclusive right of use thereof for temporal as well as ecclesiastical purposes [R. 84, Par. II; R. 86; Par. V; R. 87, Pars. VIII and IX]; (2) ownership and exclusive right to use the copyrighted documents [R. 89, Par. II]; (3) exclusive

right to use the said insignia and emblem [R. 89, Par. II]; (4) ownership and exclusive right of use of the names and addresses of Students, Probationers and Disciples, designated "affiliates" by petitioners [R. 89, Par. V]; (5) the exclusive right to print, publish and sell copyrighted documents under the license agreement of October 21, 1931, as modified by the agreement of October 9, 1934 [R. 90-98].

Note: Petitioners did not urge as a special defense to the cross-action, as they assert at pages 19 and 48 of their petition, the non-joinder of any Probationer not a party to the action. Petitioners merely urged as a special defense in their answer, that a very small minority of Students, Probationers and Disciples of the Rosicrucian Fellowship have consented to and are sponsoring the action of cross-complainants; that "all of the persons who constitute such minority are necessary parties to this action" [R. 98].

The actual controversies pleaded and tried were the rights of (a) petitioners, the college corporation and its twelve self-perpetuating Trustees (directors) as temporal Trustees of the real and personal property, and (b) respondents, representing all of the members of the church association as beneficial owners: (1) to ownership and right to use, possess and enjoy said real and personal properties; (2) to use the name "The Rosicrucian Fellowship"; (3) to use copyrighted books and documents; (4) to use an emblem and insignia of the Rosicrucian Philosophy formulated and established by Mr. and Mrs. Max Heindel; and (5) to use and possession of a mailing list of members of the association and Students of Philosophy, together with the plates and machinery for the transposition thereof; all in the conduct of ecclesiastical functions

of the Rosicrucian Philosophy, a religious belief. A secondary issue was the ownership of the copyrights upon said documents by plaintiff corporation and Mrs. Max Heindel, respectively, and the right to print, publish and sell copyrighted documents as between petitioner corporation and respondent corporation, respectively, under written license agreements (see *The Rosicrucian Fellowship v. The Rosicrucian Fellowship Non-Sectarian Church*, 72 Cal. App. 2d 171 at 172-182 (164 P. 2d 282 at 283)).

Petitioners admitted in their Appellants' Reply Brief that the subject matter of the case was property rights. At page 12 they state:

> "We do not quarrel with the assertion that the subject matter of this case, as shown by the complaint of Appellants and the cross-complaint of Respondents, are property rights in the property of The Rosicrucian Fellowship, owned and held by Appellant Corporation in trust for the members of The Rosicrucian Fellowship. The property rights involved in the complaint of Appellants are (1) use of the name, 'The Rosicrucian Fellowship,' (2) use of certain copyrights, (3) use of the mailing list of the members and affiliates of The Rosicrucian Fellowship, (4) accounting for financial contributions obtained by respondents through deceptive use of aforesaid mailing list of Appellants. The subject matter of the cross-complaint covers not only the aforesaid property rights but Respondents assert in addition the right to use all of the real and personal property of The Rosicrucian Fellowship, as well as its emblem and insignia, in competition with Appellants and Appellant Corporation and members of The Rosicrucian Fellowship."

The Supreme Court stated the subject matter of the case as follows:

> "The controversy mainly concerns whether plaintiff corporation or defendant corporation and the unorganized followers have rights in connection with certain property acquired in the (fol. 2504) course of the development of the religious group known as 'The Rosicrucian Fellowship.'" [R. 197.]

The case was transferred to San Diego County and there tried.

C. Summary of the Judgment of the Trial Court.

From the foregoing Findings of Fact, the Trial Court rendered its judgment, in substance as follows:

> Paragraph A: That plaintiff (petitioner) corporation take nothing by its complaint [R. 139];
>
> Paragraph B: The property and civil rights of the parties to and represented in the action were declared and determined, in substance, as follows:
>
> (1) That cross-defendant (petitioner) corporation owns all the real and personal property at Mt. Ecclesia and wheresoever situate, as trustee, in trust for the use, benefit and enjoyment of the cross-complainants (including all Probationers and Disciples in the United States, a majority of all in the world), as members of said unincorporated church association, and as members of the respondent church corporation as beneficiaries (hereinafter referred to as "respondents") [R. 139-142];

Note: This is contrary to the petitioners' often repeated statement that the judgment transferred the use of the properties for ecclesiastical purposes to respondent church corporation.

(2) That cross-complainants (a majority of all members of the church association in the world), as beneficiaries, are entitled to use of possession of the said trust properties in the conduct of the ecclesiastical functions without molestation or interference from petitioners. The ecclesiastical functions are then defined in part. Said use is the dominant use and enjoyment thereof [R. 142];

Note: This portion of the judgment does not, as often stated by petitioners, declare the beneficial use of the trust properties in respondent church corporation. At page 148 of Appellants' Opening Brief, they state: ". . . the judgment in this case does not expressly decree any rights of the property of the church in favor of Respondent Corporation . . ." This is an admission contrary to petitioners' present position.

(3) That cross-defendants (petitioners) by any of their acts found, have not acquired, and have no right to exercise or control any of the said ecclesiastical functions or to use the said trust properties for said purpose; *that the Probationers and Disciples, as members of the said church association or as members of respondent church corporation, have not acquiesced in any of said acts, and are not estopped, and have not waived, the right to organize a permanent church organization with a complete system of church government or to assert or exercise full and complete control of all said ecclesiastical functions* [R. 142-143];

(4) That cross-defendant (petitioner) corporation, acting by its petitioner's trustees, has and shall have the right to the use and enjoyment of the said trust

properties for temporal functions only (therein defined), *"all for the account and benefit of the Probationers and Disciples, as members of the unincorporated church association and as members of The Rosicrucian Fellowship Non-sectarian Church (respondent church corporation), beneficiaries thereof"; said use shall be servient to the right of said Probationers and Disciples to use thereof in the conduct of said ecclesiastical functions and purposes, as members of said church* [R. 143];

(5) That the Probationers and Disciples, as members of said church association and as members of respondent church corporation, are entitled, from continuous usage from and after 1909, to the use and enjoyment of the name "The Rosicrucian Fellowship," insignia and emblem, without molestation or interference from cross-defendants (petitioners) [R. 144];

(6) That the Probationers and Disciples, as members of said church association and as members of respondent church corporation, are entitled to the use and enjoyment of the mailing list of Students, Probationers and Disciples, the multigraph plates and machinery necessary for the transposition thereof, free from interference by any of the cross-defendants (petitioners) [R. 144];

(7) That the said contract of October 9, 1934 [Ex. E to cross-complaint, modifying the license agreement of October 23, 1931], has been and is breached, terminated, and is null and void [R. 144];

(8) That cross-complainant (respondent) Mrs. Max Heindel is the owner of the books, pamphlets

and letters described in Exhibit C to the cross-complaint, and copyrights thereon, subject to the non-exclusive right of appellant corporation to *print, publish and sell* (*use* not mentioned) the same under license agreement of October 23, 1931 [Ex. D to cross-complaint; R. 144];

(9) That cross-complainant (respondent) Mrs. Max Heindel was entitled to license The Rosicrucian Fellowship Non-Sectarian Church (respondent church corporation) under license agreement of October 10, 1944, to *print, publish, sell, distribute and use* each and all of said copyrighted books, pamphlets and letters [R. 144];

(10) That cross-complainant (respondent) church corporation was and is entitled to, and has, the non-exclusive perpetual right under said license agreement of October 10, 1944, to print, publish, sell, distribute and *use* each and all of said copyrighted books and documents [R. 145].

Paragraph C: Cross-defendants (petitioners) are, and each of them, and their agents, servants, attorneys and employees is, enjoined:

(1) From claiming or asserting ownership of said trust properties, except as trustee, for the use, benefit and enjoyment of the Probationers and Disciples of the Rosicrucian Philosophy [R. 145];

(2) From interfering with the Probationers and Disciples in the use and enjoyment of said trust properties in the conduct of the ecclesiastical functions of the Rosicrucian Philosophy [R. 145];

(3) From interfering with the use of said trust properties by Students admitted by the Probationers and Disciples in the study or participation in ecclesiastical functions as established and conducted by the Probationers and Disciples [R. 145];

(4) From conducting, attempting to conduct or carry on, or interfering with the conduct of, the said ecclesiastical functions by the Probationers and Disciples [R. 145];

(5) From claiming or asserting the exclusive right to the use of the name "The Rosicrucian Fellowship," insignia or emblem, or interfering in any way with the use thereof by cross-complainants (respondents) [R. 145];

(6) From preventing, or interfering in any way with, the use by the Probationers and Disciples, as members of the said church association and as members of respondent church corporation, of the mailing list, multigraph plates or machinery for the transposition thereof [R. 145-146];

(7) From claiming or asserting that respondent church corporation has no right to print, publish, sell or *use* all or any of the said copyrighted documents under said license agreement of October 10, 1944 [R. 146];

(8) From interfering with Mrs. Heindel or respondent church corporation in the use of plates and matrices for the printing of said copyrighted books

and documents under said license agreement of October 23, 1931, except as therein provided for the joint use thereof [see Ex. D to cross-complaint, providing for joint use of plates and matrices; R. 146];

(9) From writing or mailing any letter or other written or printed statement, or making any verbal or oral statement, to Students and Disciples or any other person, firm or corporation, containing any false statements in substance or effect as found in paragraph XII(3) of said findings (that respondents, including Mrs. Heindel, were dishonest and untruthful; had selfish purposes and motives in organizing the Rosicrucian Probationers' Association and respondent church corporation, a recalcitrant minority, an outlaw organization without sanction, and were organized for the purpose of usurping the ecclesiastical functions of The Rosicrucian Fellowship; that The Rosicrucian Fellowship was not a church or religious organization), or doing any other acts or things, by threat, intimidation or otherwise, to prevent or deter Probationers or Disciples from becoming members of respondent church corporation; and from interfering in any way with the Probationers and Disciples as members of the said church association and as members of respondent church corporation in the conduct of the ecclesiastical functions at any place [see summary of Finding XII and evidence in support thereof, *supra;* R. 146];

Note: This paragraph was reversed by the State Supreme Court [R. 220].

(10) From interfering with the exclusive use by Mrs. Heindel, or other Probationers or Disciples hereafter designated by respondent church corporation, of confidential discipleship instructions prepared by Max Heindel and entrusted to Mrs. Max Heindel for the benefit of the unincorporated church association [see summary of Finding XII-7 and evidence in support thereof, *supra;* R. 146].

Paragraph D: That none of the causes of action of the cross-complaint is barred under Section 337, Subdivision 1 of the Code of Civil Procedure; that none of the respondents has waived any of the rights or claims set forth in the first, second, third or fourth causes of action of the cross-complaint, and respondents are not estopped to claim or assert any of the relief prayed for therein [R. 146-147].

Paragraph E: That respondents recover from appellants their costs of suit [R. 147]."

D. The Decision of the Supreme Court of California.

Based upon the foregoing Finding of the Trial Court, the Supreme Court of California affirmed the judgment of the Trial Court in all respects except as to Paragraph C(9) of said judgment, which was reversed, and held:

1. The Trial court had jurisdiction to determine the property and civil rights which were the basic issues in the action as between all the Probationers represented therein, and as a necessary incident thereto, to inquire into

and determine facts as to contracts, rules, regulations, practices and customs accepted and followed by the parties relating to the ecclesiastical and temporal functions, respectively.

2. The petitioner corporation, acting by and through its twelve self-perpetuating Trustees, did not own and could not surreptitiously claim the property and civil rights as against the Probationers, as members of the church association, or as members of the respondent church corporation, *cestui;* and could not use the trust properties and civil rights for ecclesiastical purposes, attempted to be usurped by petitioners; that the malfeasant Trustees were properly enjoined from such claims and uses [R. 204-209].

3. The cross-action was a proper representative action where the Probationers represented in the action were a majority of all the Probationers in the world; the foreign Probationers were not indispensable parties to the action; the judgment did not require all Probationers to submit to the ecclesiastical control of the Church by respondent church corporation; and the rights of foreign Probationers were not adversely affected by the judgment [R. 209-210].

E. Statement of Questions Involved.

The real questions involved are:

1. Did the Trial Court have jurisdiction, without violating the due process clause of the United States Constitution, to try and determine the property and civil rights

of the trustees and beneficiaries, respectively; and, as a necessary incident thereto, to inquire into and determine facts as to contracts, rules, regulations, practices and customs, accepted and followed by the parties, relating to ecclesiastical and temporal functions, respectively?

2. Did the judgment of the Trial Court and decision of the Supreme Court of California declaring the property and civil rights of Petitioners, as trustees, on the one hand; and the probationers, as members of the church association and as members of respondent church corporation, on the other hand; and enjoining the trustees from unlawfully claiming the property and civil rights, adversely to all *cestui,* deprive the trustees of freedom of negligence, freedom of speech or press contrary to the Fourteenth Amendment of the United States Constitution?

3. Where, as here, the temporal trustees claim all property and civil rights adversely to all beneficiaries; did not urge, as a special defense to the action the nonjoinder of any probationer; prevented respondents from obtaining their consent to represent them in the action by withholding the mailing list; the foreign probationers were outside the jurisdiction of the State Court; the judgment did not adversely affect their property or civil rights, can the trustees assert and were the foreign probationers indispensable parties to the action?

ARGUMENT.

I.

The State Court Had Jurisdiction, Without Violating the Due Process Clause of the United States Constitution, to Try and Determine the Property and Civil Rights of the Trustees and Beneficiaries Represented, Respectively; and, as a Necessary Incident Thereto, the Facts as to Contracts, Rules, Regulations, Practices, Customs and Usages Followed by the Parties Relating to the Ecclesiastical and Temporal Functions, Respectively. Any Federal Questions Decided Were in Accord With Applicable Decisions of This Court.

Note: Respondents' argument under this topic covers appellants' first reason relied on for allowance of the writ (Pet. pp. 10-11), and Point 1 of appellants' argument (Pet. pp. 27-45).

Respondents have heretofore demonstrated that the issues pleaded, tried, found and determined in the Trial Court, and by the decision of the State Supreme Court, were the respective claims of the Trustees and beneficiaries represented to title and use of real property and civil rights relating to trust property, the name, insignia, emblem and mailing list, for ecclesiastical purposes; whether the Trustees could surreptitiously claim such property rights and civil rights for ecclesiastical purposes adverse to all beneficiaries; whether the Probationers, as beneficiaries, were entitled to such use.

The United States Supreme Court has consistently held: (1) In church controversies as to use of church property, the Civil Courts have jurisdiction to inquire into the form of church government, contracts, rules, regulations, practices and customs accepted and followed by the

members; (2) that the Trustees of church properties cannot, by chicanery, deceit or fraud, claim title and exclusive use of church property and civil rights for their own selfish benefit by exclusion of members or any other fraudulent manner, under the guise of infraction of freedom of religion, freedom of the press, or freedom of speech; and (3) that a majority of the members of a church having an independent congregation, without higher ecclesiastical authority or officers vested with power of control, are entitled to the use of church properties.

Watson v. Jones, 80 U. S. 679, 20 L. Ed. 666.

In that case, this Court announced these fundamental principles:

1. Religious organizations come before the courts in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property or of contract are equally under the protection of the law and the actions of their members subject to its restraints (p. 670[1]). If, as here, the form of church organization is that of an independent congregation, without higher ecclesiastical authority or officers vested with power of control, the principle of government must be that of majority rule, which must control the right to the use of the property (p. 675[2]).

2. The Trustees of the church hold possession in a fiduciary capacity, have no personal ownership or right, and can be compelled, in a proper case, made out in a Court having jurisdiction, to recognize the rights of possession and use by the beneficiaries of the trust (p. 673).

These principles were followed in *Bouldin v. Alexander,* 82 U. S. 131, 21 L. Ed. 69. In this case, a minority of

the members including the pastor of a Baptist Church, having a congregational form of church government, without fealty to higher ecclesiastic authority, determined to turn out the four temporal Trustees and a majority of the congregation, without citation or trial, and to elect their own Trustees, who took exclusive possession of church property. The Court examined into the form of church government, rules, regulations, usages and practices and determined that the minority members and their Trustees could not claim the properties and use thereof contrary to the duly constituted members and their Trustees. The holding of the Court is well stated in 23 R. C. L. 435, as follows:

> "It has also been held in some instances that while the civil courts will ordinarily leave ecclesiastical questions to the church courts, this presupposes a court organized according to the organic law of the particular church, and that a member who consented to be tried by the courts of the church when he united with it has a right to be heard in civil courts on the question whether unauthorized persons have usurped control of the church tribunal."

At page 72, the Supreme Court further stated:

> "In a congregational church, the majority, if they adhere to the organization and to the doctrines, represent the church."

In the case at bar, the Court found that there was no schism; that the church was without a system of church government having higher ecclesiastical authority; that the Trustees could not usurp the ecclesiastical functions and use of the church properties for that purpose.

Gonzales v. Roman Catholic Archbishop of Manila, 280 U. S. 1, 74 L. Ed. 131, holding that the Archbishop

was a juristic person amenable to the Philippine Courts for the enforcement of any legal right. In answer to the contention of the defendant that the Court had no jurisdiction, this Court said, at page 136:

> "The objection is not sound. The courts have jurisdiction of the parties. For the Archbishop is a juristic person, amenable to the Philippine courts for the enforcement of any legal right; and the petitioner asserts such a right. There is jurisdiction of the subject-matter. For the petitioner's claim is, in substance, that he is entitled to the relief sought as the beneficiary of a trust."

Other authorities have followed these decisions.

In 76 Corpus Juris Secundum, "Religious Societies, Sec. 86, Jurisdiction and Power of Civil Courts in General," at pages 873-874, it is said:

> "While the civil courts have no jurisdiction over, and no concern with purely ecclesiastical questions and controversies, they do have jurisdiction as to civil, contract, and property rights even though such rights are involved in, or arise from, a church controversy."

Zollman on "American Civil Church Law" also concurs in this principle. At page 186, Zollman states:

> "Since unanimity of thought and conduct is a goal which, even if it were desirable to be reached, will forever remain unattainable it follows that in independent societies, which owe no fealty or obligation to any higher authority, *the will of the numerical majority of its members must ordinarily determine the action* of the church upon all questions of church government, and be the law of the church. Clear indeed must be the case which will result in setting

aside the cardinal principal which lies at the foundation of free government in church as well as in state, viz., the right of the majority to rule."

Also, at page 191, the same author says:

"The guaranty of religious freedom 'does not guaranty freedom to steal churches.' "

At pages 11 and 32, petitioners assert that the contest in the case at bar is not for title of church property; and, at page 33, that the action instituted by petitioner corporation was to protect certain property rights of the church and not as against the members of the church. These assertions are contrary to petitioners' pleadings, hereinbefore summarized, wherein petitioners claim absolute ownership of the trust properties, exclusive use of possession thereof for all purposes, and exclusive right to the use of the name, insignia, emblem, mailing list and copyrighted documents. No allegation is contained in petitioners' pleadings, under which they claim to hold any of the properties or civil rights in trust for any of the Probationers (beneficiaries).

At page 12 of petitioners' brief in the State Court, they state:

*"We do not quarrel with the assertion that the subject matter of this case, as shown by the complaint of appellants and the cross-complaint of respondents, are property rights in the property of the Rosicrucian Fellowship * * *."*

Appellants' next contention, set forth at page 11, is that the judgment affirmed by the State Supreme Court transferred control of the use of church properties in the exercise of ecclesiastical functions to respondent church corporation organized without the knowledge and consent

of all members of the church, and, at page 33, the judgment declared and "enjoined the exercise and control of ecclesiastical functions by the losing faction of members."

The only persons enjoined by the judgment were appellant corporation and its Trustees. Again, at page 35, it is claimed by petitioners that, by the judgment, the defendant corporation is determined to be the ecclesiastical leader of the church; that only it has the right to exercise these functions; that all the members of the association must abide by its articles, by-laws, rules and regulations; and that no other person has the right to carry on the ecclesiastical functions of the church under penalty of contempt.

The sole basis for petitioners' construction of the judgment is paragraph B(2) of the judgment. The first sentence of paragraph B(2) of the judgment reads as follows:

> "(2) That cross-complainants, as such beneficiaries, are entitled to the use and enjoyment of said real property, improvements, fixtures and all other personal property of every nature and description in and upon said real property in the conduct of ecclesiastical and esoteric functions of the Rosicrucian Philosophy without molestation or interference from the cross-defendants or any of them, their agents, servants or employees."

By the use of the clause "cross-complainants, as such beneficiaries," refers to paragraph B(1) of the judgment, which provides as follows:

> "(1) That cross-defendant, The Rosicrucian Fellowship, a corporation, owns and holds all that certain real property located in the City of Oceanside, County of San Diego, State of California, and more

particularly described as follows: (property description) and all other real property wheresoever situated and all improvements, fixtures and all other personal property thereon and thereat, of every nature and description, as trustee, in trust for the use, benefit and enjoyment of the cross-complainants as Probationers and Disciples of the Rosicrucian Philosophy, as members of the unincorporated church association organized in 1908 and 1909, and as members of The Rosicrucian Fellowship Non-Sectarian Church, as beneficiaries."

Paragraph B(2) of the judgment then proceeds to state the ecclesiastical functions as including "without limitation" various items specified, and concludes with this clause: "and to otherwise conduct each and all of the ecclesiastical and esoteric functions of every nature and description as set forth and prescribed in the Articles of Incorporation, By-laws and rules and regulations of The Rosicrucian Fellowship Non-Secterian Church." This clause *does not limit* the other specified items of what constitutes ecclesiastical functions, but is *in addition thereto,* and applies only to the members of the association who have joined the respondent church corporation. This is the only reasonable construction of the judgment; otherwise, paragraph B(2) would be inconsistent with paragraph B(1) thereof.

By reading paragraphs B(1) and B(2) alone, it might appear that the rights declared were in the cross-complainants (all the Probationers in the United States, 706 in number, a majority in the world). However, other provisions clearly establish that the beneficial rights declared and protected were in all of the Probationers and not just those represented in the action.

Paragraph B(3) of the judgment, after declaring that the petitioners have no right to control any of the ecclesiastical functions or use the trust properties for the purpose, declares that the Probationers and Disciples, whether members of the church association or church corporation, have not waived a right to assert or exercise full and complete control of the ecclesiastical functions.

Paragraph B(4) of the judgment declares petitioner corporation to have the right to use and enjoy the right to church properties for temporal purposes only, "all for the account and benefit of the Probationers and Disciples, as members of the unincorporated church association and as members of the Rosicrucian Fellowship Non-Sectarian Church, beneficiaries thereof."

Paragraph B(5) of the judgment declares that the Probationers and Disciples, as members of the church association and church corporation, are entitled to use and enjoy the name, insignia and emblem.

Paragraph B(6) of the judgment declares that the Probationers and Disciples, as members of the association and church corporation, are entitled to use and enjoy the mailing list.

The injunctive provisions of the judgment enjoin the college corporation and its Trustees (petitioners) from interfering with the property and civil rights of the Probationers and Disciples, as members of the church association and as members of respondent church corporation, as beneficiaries.

Therefore, it is crystal-clear that the beneficiaries entitled to the use of the properties and civil rights are the Probationers and Disciples of the Rosicrucian Philosophy, as members of the unincorporated church asso-

ciation and as members of the respondent church corporation.

The Supreme Court so viewed the judgment and stated:

> "As we construe the judgment, the rights are accorded to all of the followers of the philosophy whether or not they are members of the defendant corporation." [R. 220.]

The Court also stated:

> "We do not construe it (the judgment) to mean that only the members of defendant corporation are beneficiaries entitled to the use of the property." [R. 210.]

Even if this Court should construe the judgment as declaring the right to use of trust properties for ecclesiastical purposes in the cross-complainants, representing a majority of all the Probationers in the world, such declaration is in entire accord with the decisions of this Court.

Watson v. Jones, supra;

Bouldin v. Alexander, supra.

A. Re: Appellants' Authorities.

Appellants first assert that there is a complete division between church and state under any and all circumstances. They cite, in support of their position, the case of:

Watson v. Jones, supra.

This case does *not* support petitioners' contention. The case announces the general principle of separation between church and state, but holds a civil Court had jurisdiction to inquire into the form of church government and practices; and, where a church has a form of church

government with a higher ecclesiastical authority, the determination of that body is binding on the Civil Courts. However, the Court there did lay down the principles, hereinbefore summarized: (1) rights of property and of contract of religious organizations are under the protection of the law and the actions of their members subject to its restraints; (2) that in churches having an independent congregation form of church government, a majority of the members are entitled to the use of the church properties; and (3) the Trustees of any church can be forced, by orders of the Civil Courts, to respect the rights of the members entitled to such use.

Kedroff, etc. v. St. Nicholas Cathedral, etc., 97 L. Ed. Adv. p. 95; 21 L. W. 4029, is cited by petitioners in support of their position. In that case, a church having a form of church government with higher ecclesiastical authority, and where the church building is occupied by duly constituted appointees of the higher ecclesiastical authority, a state statute which attempts to divest their possession and use of the church property, in favor of a corporation created and declared to be entitled to possession or control of the church properties by a special Act of the Legislature, violates the guarantees of religious freedom embodied in the First and Fourteenth Amendments.

In the case at bar, the church had no higher ecclesiastic authorities or tribunals; there was no schism; there was no deviation in the methods of teaching the religious belief or attempted diversion of the properties therefor; and there was no state statute involved. The distinction as to the power of the Court to adjudicate disputes over church property, and the rights of the legislators to do so,

is recognized in the concurring opinion by Mr. Justice Frankfurter. The *Kedroff* case is entirely distinguishable from the case at bar.

At page 31, petitioners cite and quote from 20 A. L. R. 2d 421. An examination of that authority discloses that it deals entirely with the jurisdiction of civil courts to determine whether or not there was a duly constituted church authority in the case of the suspension or expulsion of members of a church or religious society. It is significant to note from the following quotations that this authority does not support petitioners.

> (P. 440.) "It is generally held that a civil court has jurisdiction to determine the question whether an alleged expulsion of a member from a church or religious society was the act of an authority within such body having power to order it."
>
> (P. 442.) "It is worthy of note also that *Bouldin v. Alexander* has been very widely cited as an authority for reviewing the actuality of an expulsion, while *Watson v. Jones* has apparently never been followed to the extent of basing upon its authority a refusal to review the jurisdiction of an expelling tribunal."
>
> (P. 445.) "Consequently one of the most common instances of the review of the actuality of an expulsion is the action of a court in determining whether it was void because the person or body undertaking to expel was not authorized to do so the rules or customs governing the disciplinary authority of the particular church."
>
> (P. 447.) "Another very common occasion for the review of the actuality of an expulsion is the question whether the minority of a church having a congregational polity has undertaken to expel the majority."

> (P. 470.) "In addition to whatever jurisdiction a particular court may consider itself to have in an ordinary case of expulsion it has the further jurisdiction to review the question whether an expulsion was induced by fraud, since 'fraud vitiates all transactions.' "

In the case at bar, the Trustees fraudulently and without authority excluded the Probationers from the use of church properties.

Respondents urge that petitioners, as temporal Trustees, never had any control of the use of church properties in the exercise of ecclesiastical functions, except those usurped and unlawfully claimed by the Trustees, who were enjoined from such use. These were the facts found.

At page 42, petitioners refer to recitations in the 1931 license contract, as to the number of members (over 2000) of the Rosicrucian Fellowship. The recitation does not support petitioners' statement, but is only to the effect there were approximately 4500 Students, Probationers and Disciples. No matter how many members there may have been in 1931, it was the conclusive Finding of the Trial Court that there were 706 Probationers in the United States, and by petitioners' own evidence there were 1170 in the world at the time of trial.

Respondents submit that the judgment of the Trial Court and the Opinion of the State Supreme Court are in exact accord with applicable decisions of this Court (Rule 38(5)(a)).

II.

The Injunction Against the Malfeasant Trustees Enjoining Them From Interfering With the Use by the Beneficiaries of the Trust Properties and Civil Rights for Ecclesiastical Purposes, Did Not Constitute a Denial of Freedom of Religion, Freedom of Speech or Press.

At pages 45-47 of their brief, petitioners quote paragraph C(4) of the injunctive provisions of the judgment. Paragraph C(2) reads as follows:

> "From interfering with the said Probationers and Disciples in the use and enjoyment of said real property, improvements, fixtures, and all other personal property thereon and thereat, in the conduct of or participation in said ecclesiastical and esoteric functions of the Rosicrucian Philosophy."

The phrase "said ecclesiastical and esoteric functions," used in paragraph C(4), refers *to use and enjoyment of the trust properties* by the Probationers in the conduct of the ecclesiastical functions as used in paragraph C(2) of the judgment. Petitioners, without citation of authority, vehemently assert that the injunction constitutes a denial of freedom of religion, press and speech guaranteed by the United States Constitution to the individual cross-defendants enjoined. Petitioners assume, without demonstration, that all of said individuals were Probationers of the Rosicrucian Philosophy. Even assuming, without admitting, that they were such Probationers, it is apparently the position of petitioners: that individuals, who occupy the position of fiduciary trustees of temporalities, can, with immunity, violate the fundamental principles of trusts simply by removal of their fiduciary mask, and be free to continue their acts of malfeasance in an

individual capacity. This would be contrary to the fundamental principles of justice which, in the case of fraud, will look through any and all forms and fictions to the end that justice may be accomplished in an equitable proceeding.

Petitioners have cited no authority for their position for the obvious reason that none exists.

III.

Where, as Here, the Trustees Claim All Property and Civil Rights Adversely to All Beneficiaries, Prevented Respondents From Obtaining the Consent of Foreign Probationers to Represent Them in the Action by Withholding the Mailing List, the Trial Court Could Not Otherwise Acquire Jurisdiction of the Foreign Probationers, All Probationers Were Adequately and Fairly Represented in the Action, and the Judgment Did Not Adversely Affect Their Property or Civil Rights, the Foreign Probationers Were Not Indispensable Parties; the Judgment Did Not Deprive Them of Property Without Due Process of Law.

The Trial Court found that the petitioners claimed exclusive right to the use of the mailing list of Probationers and refused respondents the right to use the same. It also found that petitioners claimed exclusive ownership of the property and civil rights, the name, insignia, emblem and copyright documents, for all purposes and took possession thereof by force and excluded all Probationers, who were seeking to organize the Church, from use thereof. Petitioners have not claimed or demonstrated that the foreign Probationers were not fairly and adequately represented in the action, nor have they demonstrated that the judgment adversely affected their rights.

On the contrary, the Supreme Court, after carefully studying and reviewing the judgment, determined that all Probationers, as members of the unincorporated church association and as members of respondent church corporation, were the beneficiaries for whom the trust properties were held and, as such beneficiaries, were entitled to use the trust properties and civil rights for ecclesiastical purposes without molestation or interference by the Trustees.

The Supreme Court of California so held, and stated:

> "* * * we feel the court was justified in assuming that a sufficiently substantial number of those who could reasonably be reached had joined. Moreover, we understand the judgment to accord rights to all members of the unincorporated church association, as well as defendant corporation, and hence the foreign followers have not been prejudiced." [R. 209.]
>
> "Thus, all followers, whether members of the unincorporated church, or the defendant corporation, are beneficiaries and may use the property. We do not construe it to mean that only the members of defendant corporation are beneficially entitled to the use." [R. 210.]

The decision of the State Court is in exact accord with prior decisions of this Court.

> *Smith et al. v. Swarmstedt et al.*, 57 U. S. 288, 302, 14 L. Ed. 942.

This was a representative action by six members of the Methodist Episcopal Church South, on behalf of all preachers of the Church South, amounting to about 1500, against two members of the Methodist Episcopal Church, representing more than 3000, for the division of property acquired by the general church for the benefit of all travel-

ing preachers. Defendants objected that the Court had no jurisdiction for want of proper parties plaintiff. At pages 301-302, the Court said:

> "The rule is well established, that where the parties interested are numerous, and the suit is for an object common to them all, some of the body may maintain a bill on behalf of themselves and of the others; and a bill may also be maintained against a portion of a numerous body of defendants, representing a common interest. Story's Eq. Pl. secs. 97, 98, 99, 103, 107, 110, 111, 116, 120; 2 Mitf. Pl. Jer. Ed. 167, 2 Paige, 19; 4 Mylne & Cr. 134, 619; 2 De Gex & Smale, 102, 122.
>
> "Mr. Justice Story, in his valuable treatise on Equity Pleadings, after discussing this subject with his usual research and fullness, arranges the exceptions to the general rule, as follows: 1. Where the question is one of a common or general interest, and one or more sue or defend for the benefit of the whole. 2. Where the parties form a voluntary association for public or private purposes, and those who sue or defend may fairly be presumed to represent the rights and interests of the whole; and 3. Where the parties are very numerous, and though they have or may have separate and distinct interests, yet it is impracticable to bring them all before the court.
>
> "In this latter class, though the rights of the several persons may be separate and distinct, yet there must be a common interest or a common right, which the bill seeks to establish or enforce. As an illustration, bills have been permitted to be brought by the lord of a manor against some of the tenants, and vice versa, by some of the tenants in behalf of themselves and the other tenants, to establish some right—such as suit to a mill, or right of common,

or to cut turf. So by a parson of a parish against some of the parishioners to establish a general right to tithes—or conversely, by some of the parishioners in behalf of all to establish a parochial modus.

"In all cases where exceptions to the general rule are allowed, and a few are permitted to sue and defend on behalf of the many, by representation, care must be taken that persons are brought on the record fairly representing the interest or right involved, so that it may be fully and honestly tried.

"Where the parties interested in the suit are numerous, their rights and liabilities are so subject to change and fluctuation by death or otherwise, that it would not be possible, without very great inconvenience, to make all of them parties, and would oftentimes prevent the prosecution of the suit to a hearing. For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and the decree binds all of them the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and maintained."

The above case is particularly applicable to the case at bar, where the rights of all the numerous beneficiaries are protected by the judgment, and their interests are identical with the cross-complainants to prevent petitioners from stealing the Church.

Waterman v. Canal-Louisiana Bank and Trust Co., 215 U. S. 33, 54 L. Ed. 80.

In this case, the Court said, at page 86:

> "* * * the relation of an indispensable party to the suit must be that no decree can be entered in the case which will do justice between the parties actually before the court without injuriously affecting the rights of such absent party. 1 Street, Fed. Eq. Pr., Sec. 519."

Plainly stated, petitioners' contention is facetious and specious. It is urged for only one reason: to enable the malfeasant Trustees to permanently usurp the ecclesiastical functions and unlawfully claim ownership and right of use of property and civil rights for that purpose, adversely to all beneficiaries, including the foreign Probationers who they assert are indispensable parties.

Respondents submit that the decision of the Trial Court, as affirmed by the State Supreme Court, has been decided by this Court as evidenced by respondents' authorities heretofore cited and is in exact accord therewith. The Petition, in the interests of justice, should be denied.

Respectfully submitted,

STEWART, SHAW & MURPHEY,
WM. L. MURPHEY,
Counsel for Respondents.

LUCE, FORWARD, KUNZEL & SCRIPPS,
FRED KUNZEL,
Of Counsel.

All emphasis and parenthetical matter is ours unless otherwise specifically stated.